

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
SAN FRANCISCO BRANCH OFFICE**

UNIVERSAL HEALTH SERVICES OF RANCHO  
SPRINGS, INC., d/b/a SOUTHWEST  
HEALTHCARE SYSTEM, d/b/a INLAND VALLEY  
MEDICAL CENTER

Cases 21-CA-37018  
21-CA-37398  
21-CA-37484  
21-CA-37522

and

CALIFORNIA NURSES ASSOCIATION  
UNIVERSAL HEALTH SERVICES OF RANCHO  
SPRINGS, INC., d/b/a SOUTHWEST  
HEALTHCARE SYSTEM, d/b/a INLAND VALLEY  
MEDICAL CENTER

and

Case 21-RD-2814

DEBRA G. MOSS, an Individual

and

CALIFORNIA NURSES ASSOCIATION

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and *Christy J. Kwon, Esq.*, San Francisco, CA,  
for the General Counsel.

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for California Nurses' Association the Union.

*Debbie Moss*, An Individual, Temecula, CA,  
for the Petitioner.

**DECISION and  
REPORT ON OBJECTIONS**

**Statement of the Case**

**Gerald A. Wacknov, Administrative Law Judge:** Pursuant to notice a hearing in this matter was held before me in Riverside, California on November 13, 14 and 15, and Murrieta, California on November 19, 20 and 28, 2007. The charges in the captioned cases were filed by California Nurses Association (Union or CNA) on August 31, 2005, July 27, 2006, and

September 27, 2006, respectively. On January 25, 2007, the Regional Director for Region 21 of the National Labor Relations Board (Board) issued an order revoking settlement agreement, order consolidating cases, consolidated complaint and notice of hearing, alleging violations by Universal Health Services of Rancho Springs, Inc., d/b/a Southwest Healthcare System, d/b/a Inland Valley Medical Center (Respondent, Employer or Hospital)) of Section 8(a)(1) of the National Labor Relations Act, as amended (Act). The Respondent, in its answer to the complaint, denies that it has violated the Act as alleged.

The decertification petition was filed on January 13, 2006 in Case 21-RD-2814. A decertification election was held on October 25 and 26, 2006, in a unit of "All full-time and regular part-time and per diem Registered Nurses providing direct patient care in positions requiring an RN license at the Employer's facility located at 36485 Inland Drive, Wildomar, California..." consisting of some 265 eligible voters. The tally of ballots served on the parties at the conclusion of the election showed there were 95 ballots cast for, and 113 ballots cast against the Union. There were zero void ballots and 40 challenged ballots, which were sufficient in number to affect the results of the election. The Union filed timely objections to the election.

On February 1, 2007, the Regional Director issued a report on objections and challenged ballots and order directing hearing, and order consolidating cases and notice of hearing, consolidating the representation cases with the unfair labor practice proceeding.

Thereafter the parties entered into a stipulation resolving the 40 challenged ballots, and on November 25, 2007, a revised tally of ballots was served on the parties showing that of approximately 265 eligible voters, 101 cast ballots for the Union and 129 cast ballots against the Union.

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from counsel for the General Counsel (General Counsel), counsel for the Union, and counsel for the Respondent.

Upon the entire record,<sup>1</sup> and based upon my observation of the witnesses and consideration of the briefs submitted, I make the following:

## **Findings of Fact**

### **I. Jurisdiction**

The Respondent is a California corporation operating acute care hospitals, with an acute care facility in Wildomar, California. The Respondent annually derives gross revenues from its Wildomar, California business operations valued in excess of \$250,000, and annually purchases and receives goods at its Wildomar, California facility valued in excess of \$5,000

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<sup>1</sup> Following the closing of the hearing the parties entered into a stipulation to receive in evidence an additional exhibit, namely the January 13, 2006 Decertification Petition; it is hereby received. Further, the stipulation showing the number of hours worked by RN Barbara Rammell on October 7 (2.75 hours), October 16 (4.25 hours), and October 22 (9.25 hours, in 6.5 and 2.75 segments) is received in evidence as Union Exhibit 11. Further, the respective, unopposed motions to correct the transcript filed by the General Counsel and the Union are hereby granted, and the transcript shall be corrected accordingly.

from points outside the State of California. It is admitted and I find that the Respondent is, and at all material times has been, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

## II. The Labor Organization Involved

It is admitted, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## III. Alleged Unfair Labor Practices and Election Objections<sup>2</sup>

### A. Facts, Analysis and Conclusions

The Union was certified on May 14, 2004 as the collective bargaining representative of registered nurses in the unit described above. Thereafter, the parties engaged in collective bargaining and to date have failed to reach accord on a collective bargaining agreement.

On June 30, 2006,<sup>3</sup> following the filing of the instant decertification petition, the Regional Director approved an informal settlement agreement entered into by the Respondent and Union in disposition of Case 21-CA-37018 providing for the posting of an appropriate notice to employees. The Respondent posted the notice for the requisite period of time. The notice language included, *inter alia*, the following language:

WE WILL NOT tell employees they have to take off scrub tops or other items of clothing because they bear the California Nurses Association (CNA) insignia.

The record evidence shows, however, that at the time the Respondent entered into the settlement agreement it had no intention of permitting its nurses to wear CNA scrub tops. Thus, during the notice-posting period, and for months thereafter, until only a few days prior to the decertification election, the Respondent prohibited its nurses from wearing the very same CNA scrub tops. According to the Respondent the scrub tops were no longer prohibited because they bore the CNA insignia or logo, but for a different reason: namely, because the Respondent believed the logo was potentially disruptive to patient care and therefore in violation of its long-standing policy of prohibiting clothing that could be disruptive to patient care.

Whether or not the notice language is ambiguous, as the Respondent argues, it is clear there would have been no settlement of the matter had the Regional Director or the Union been apprised of the Respondent's intentions. Therefore, there simply was no meeting of the minds or mutual understanding regarding the Respondent's obligations under the settlement agreement. Accordingly, the Regional Director's decision to set it aside and include the allegation in the instant complaint is not only well-founded, but indeed mandated by the Respondent's ongoing refusal to permit the wearing of CNA scrubs while posting an official Board notice that reasonably appears to permit the wearing of such scrubs. I so find.

<sup>2</sup> The unfair labor practice issues herein are identical to certain of the Union's election objections. Accordingly, all of the issues in this proceeding are the subject matter of the Union's eighteen election objections. It appears unnecessary to enumerate them here.

<sup>3</sup> All dates or time periods hereinafter are within 2006 unless otherwise specified.

Regarding the merits of the complaint, the Respondent, as noted, believes the CNA scrub top is potentially disruptive to patient care. The Respondent does not contend that the physical size of the logo or its wording<sup>4</sup> is inappropriate, but contends that the placement of the logo on the scrub, imprinted near the left shoulder, could cause the patient or family members to believe that the patient is being cared for by an entity or individual other than official hospital staff; in other words, apparently, that the patient is being cared for by CNA or the Union rather than the Hospital. Further, one hospital administrator testified that another reason for prohibiting CNA scrubs was because of the local newspaper publicity surrounding the dissention between the Hospital and the CNA over collective bargaining issues; thus, it is argued, patients or their families could be apprehensive about the quality of care being administered by nurses aligned with the CNA. However, there has never been any such complaint by a patient or family member.<sup>5</sup>

The Hospital, with limited exceptions not relevant here, does not provide scrubs to nurses, and in fact has no scrubs bearing a hospital logo or identification. Nurses are required to furnish their own scrubs. Over the years nurses have worn and continue to wear scrubs from a variety of manufacturers, with a variety of patterns, colors, and legends, including floral patterns, Disney or other cartoon characters, and scrubs with religious connotations and language. There is no record evidence of any scrub being deemed inappropriate other than the CNA scrub in question. As noted, the Respondent objects to the CNA scrub because the location of the imprinted CNA logo on the scrub gives it an official look of perhaps an employing entity, as it is located where a hospital logo would customarily appear.

Nurses are permitted to wear CNA buttons on their scrubs, CNA lanyards around their necks, or both. They are required to wear a hospital-issued identification badge with the Hospital's logo and the wording "Southwest Healthcare System." These badges bear the nurse's name in large block letters, together with the nurse's RN title and department. Nurses may wear these badges pinned to their scrubs or on lanyards around their necks, including lanyards with "California Nurses Association" imprinted on them.

From the foregoing, it is clear that the employing entity of the nurse is never in question because the official hospital-issued photo-identification badge identifies the nurse as an employee of or authorized by Southwest Healthcare System.<sup>6</sup> And since it is permissible to wear CNA buttons and lanyards, which are conspicuous, it would seem not to make any difference that the nurse's scrub also contains a CNA logo. A patient or the family of a patient

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<sup>4</sup> The logo is rectangular, about two inches by four inches, with CNA written in script, and California Nurses Association in block letters to the right of the script. Beneath the script and block lettering is the legend, "A voice for nurses—A vision for healthcare."

<sup>5</sup> Nurses were prohibited from wearing CNA scrubs for a number of months during the ongoing election campaign, but several days prior to the election the Respondent changed its policy and permitted the wearing of such scrubs. The record shows that thereafter, nurses began wearing CNA scrubs, and apparently, insofar as the record shows, they are continuing to do so. Accordingly, there has been a sufficient period of time for patients to voice complaints or concerns about the CNA logo; as noted, there have been no such complaints.

<sup>6</sup> Indeed, since the Hospital is commonly known as Inland Valley Medical Center rather than Southwest Healthcare System, it would seem that patients would be similarly curious as to whether they were being cared for by Inland Valley Medical Center or a different entity. In any event, whatever appears on hospital uniforms or around nurses' necks, whether cartoon characters or CNA logos or hospital-issued ID's, it seems reasonable for patients to assume they are being cared for by the hospital in which they are receiving care.

is no more likely to question the quality of care simply because CNA identification appears at one location on the nurse's uniform rather than another, particularly when the nurse is also wearing the identification badge denoting that the nurse as an employee of the Hospital. As noted, there have never been any such complaints from patients or their family members.

.5 The Respondent maintains that since its prohibition of CNA scrubs was retracted prior to the election, and the nurses began wearing them at that time, this change in policy amounted to a satisfactory resolution of the problem and therefore, under such circumstances, no harm has been done and no unfair labor practice has been committed. I do not agree. RN Elizabeth Johnson testified that on October 20, about five days prior to the election, Manager Diane Lewis notified her that "as long as the scrubs were not offensive" it would be permissible for registered nurses to wear scrubs with CNA logos or insignia. This apparent policy change was communicated personally, one-on-one, to Johnson, and, according to Johnson, was disseminated among the nurses by word of mouth. There was no official notice, either written or verbal, issued by the Respondent regarding this matter. Clearly, as the nurses were precluded from wearing CNA scrubs for many months, including several months during which the Board notice remained posted, the Respondent's sudden reversal of its policy does not resolve the issue, or exculpate otherwise unlawful behavior, or excuse otherwise objectionable conduct which over a period of many months interfered with the nurses' activity on behalf of the Union.

Accordingly, I find that the Respondent's prohibition of the wearing of CNA scrubs is unwarranted and violative of Section 8(a)(1) of the Act as alleged, as well as objectionable conduct. See *Holladay Park Hospital*, 262 NLRB 278 (1982); *St. Luke's Hospital*, 314 NLRB 434 (1994); *Mercy Healthcare Sacramento*, 334 NLRB 100, 106 (2001).

The complaint alleges various Section 8(a)(1) violations committed by Lead Nurse Sue Wildgoose on or about October 12. Noemi Baluyut is an RN and also a member of the CNA Bargaining Council.<sup>7</sup> Baluyut testified that on October 12, she informed her charge nurse that she was going outside for a few minutes. According to the un rebutted testimony of Baluyut this was a common and acceptable practice, as the nurses would sometimes go to their cars in the parking lot for something or go outside for a smoke. There she received an envelope containing CNA leaflets from Union Representative Sean Fulkerson, who delivered the leaflets to her while standing in the public street outside the Hospital. Upon returning to her unit she took out one of the fliers to read it, then put the packet down at the end of the workstation. She had intended to distribute the fliers during non-work time in permissible areas.

Wildgoose came over, sat down next to her, and said she understood Baluyut had received something from Fulkerson and added, "You know you are not supposed to do that." Wildgoose asked where the envelope was, took it, and then left without saying anything further. A few days later Baluyut advised Wildgoose that she was upset with Wildgoose for taking the envelope, and Wildgoose replied, "You are not supposed to have any of those fliers, unless they have been through [Director of Nursing] Pat Harvey, and I don't think those have." Baluyut said Wildgoose should have merely told her and was upset that Wildgoose had confiscated her property. Wildgoose apologized for taking the envelope, and again said, "Everything has to go through Pat Harvey." She then asked if Baluyut had intended to distribute the fliers to the other nurses "at work." Baluyut replied no, that she intended to distribute them to the nurses after work. Baluyut testified that other types of literature have been left at nurses' stations and not

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<sup>7</sup> The CNA Bargaining Council consists of 9 members elected by the union membership who participate in bargaining and act as liaisons to the other unit RNs.

confiscated, such as “OWLS” fliers <sup>8</sup> that were apparently prepared by a group of nurses supporting the decertification petition, *infra*. According to Baluyut, OWLS fliers seemed to be present at the nurse’s station all the time. Wildgoose was not called as a witness in this proceeding.

.5 The Respondent contends that it has the right to confiscate any CNA materials that are not appropriately posted on CNA bulletin boards designated for that purpose, pursuant to an agreement between the parties. Thus, in its brief, the Respondent maintains that “the agreement between [the Hospital] and the CNA by which the CNA agreed that posting of approved notices on bulletin boards in nurse break rooms was its exclusive means of communicating with nurses on hospital premises” is dispositive of this issue.

10 The record evidence shows that on August 24, 2004, during the course of bargaining, several years prior to the decertification petition herein, the parties reached a “tentative agreement” on an item entitled “Bulletin Boards,” in which the Respondent agreed to provide bulletin boards in nursing break rooms for materials, *inter alia*, that are not “controversial” and which do not “disparage or demean” the Hospital, “provided that advance permission has been obtained from the HRD [Hospital Director of Nursing Pat Harvey] or designee.” Further, the language provides, “There shall be no other postings of materials on the Employer’s premises by or on behalf of the [CNA] except as described herein.”

15 There is a dispute between the parties regarding whether this tentative agreement was implemented, or was to become effective only upon the signing of a complete collective bargaining agreement. In any event, the tentative agreement is limited by its terms to only the “posting” of materials, and does not reference the “distribution” of materials. Thus, the Hospital’s handbook, under the heading of “Solicitation and Distribution” provides that employees ‘may not distribute literature or printed material of any kind in working areas at any time.’ “Distribution”...includes directly handing materials to individuals, as well as leaving quantities of materials in the Hospital for individuals to pick up.” Accordingly, it is clear that neither the tentative agreement nor the hospital’s handbook prohibits the distribution of CNA handbills or leaflets in non-working areas. Moreover, during the course of the decertification campaign OWLS fliers as well as CNA fliers were left on tables in breakrooms, and at no time did the Respondent advise the CNA of the position the Respondent is now adopting in this proceeding, namely, that by entering into the aforementioned “tentative agreement” the CNA had forfeited its right to distribute literature in non-working areas during the election campaign.

20 Having found the Respondent’s argument to be without merit, I further find that by Wildgoose’s conduct the Respondent unlawfully told Baluyut she should not be talking with or receiving materials from union representatives, confiscated the materials, told Baluyut that she could not be in possession of CNA materials that had not been approved by Director of Nursing Pat Harvey, and unlawfully interrogated Baluyut regarding what Baluyut intended to do with the materials, all in violation of Section 8(a)(1) of the Act; and further, such conduct constitutes objectionable conduct. See *Mercy General Hospital*, 334 NLRB 100, 107 (2001); *Central Valley Meat Co.*, 346 NLRB 1078, 1080, 1087 (2006); *MetFab, Inc.*, 344 NLRB 215, 220 (2005).

45 <sup>8</sup> The acronym OWLS stands for “Oust Wicked Labor Union Stat”; “Stat” meaning “immediately.”

The complaint alleges that House Supervisor Laurie Mallory confiscated CNA material from a non-work area on about October 16. Elizabeth Johnson, a charge nurse<sup>9</sup> in the medical/surgical unit and a member of the CNA Bargaining Council, testified that on  
 .5 October 16, she happened to be standing near the doorway of the “common room” in the 2-East section of the second floor of the Hospital, and observed House Supervisor Laurie Mallory pick up a stack of approximately 100 Union fliers from a table in the room and discard them in the trash. On that same day she saw a stack of OWLS fliers in the room that had not been discarded. Johnson told the other nurses on staff that evening what she had observed, and this  
 10 led to a general discussion about similar incidents observed by others.

Mallory did not testify in this proceeding and therefore I credit Johnson’s testimony. However, the Respondent maintains that the common room, located approximately mid-way between the 2-East and 2-West wings of the second floor of the Hospital, is a work area;  
 15 therefore, it was appropriate for Mallory to remove the CNA fliers from that work area. The record evidence shows that the common room is a large multi-purpose general-use room, used simultaneously by nurses who are working and by nurses who are on their breaks, as there is no other break room in 2-East. Carts and cabinets containing medicines and supplies for patients are located in the room, and nurses may perform charting, reporting, copying and other  
 20 work in the room. Also, however, nurses use the room for breaks and lunch. As RN Genevieve Higuera testified:

[W]e do baby showers [in the room]...90% of us take our breaks and lunch back there because there really isn’t a place to go, unless you go downstairs in the cafeteria. And basically, you feel like you’re kind of—need to be there anyway  
 25 during break, that you’re going to get needed or get called, you know. So we tend to stay up there.

And while 2-West does have a designated break room, called “Paris” because of a Paris motif,  
 30 it is very small, about the size of a patient room, with limited space for tables. Therefore, according to Higuera, the nurses from 2-West often take their breaks in the common room. The record further shows that campaign literature is placed on tables in both the common room and in the Paris break room. There is no evidence that the common room has been designated by the Hospital as an exclusive work area, or that nurses have been advised the common room  
 35 is not to be used for union activity.<sup>10</sup> Accordingly, it is clear that the common room is commonly understood to be, in effect, the designated break room for nurses working in 2-East even though nurses not on break may also be utilizing the room for work-related purposes.

On the basis of the foregoing, I find that the removal and discarding of union literature  
 40 from the common room by House Supervisor Laurie Mallory is violative of Section 8(a)(1) of the

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<sup>9</sup> During the election campaign the Respondent took the position that charge nurses were supervisors, while the Union took the position that charge nurses were appropriately a part of  
 45 the bargaining unit; therefore, it was understood that charge nurses would vote subject to challenge. Subsequent to the election, in order to resolve determinative challenged ballots, the parties stipulated that, for purposes of the instant matters, charge nurses are not supervisors and are included in the bargaining unit, and further, that they were bargaining unit employees during the election campaign.

<sup>10</sup> Indeed, as found below, House Supervisor Julie Mobley placed stacks of OWLS fliers in the common room for distribution to employees.

Act, and also constitutes objectionable conduct. *Mercy General Hospital, supra*, 344 NLRB at 107; *Venture Industries*, 330 NLRB 1133, 1134 (2000).

5 The complaint alleges that certain conduct of Brent Yessin and Kathy Tregear, as agents of the Respondent, is violative of the Act. Yessin is the principle partner of Yessin & Associates LLC, a consultant firm hired by the Hospital, and Tregear is an associate of the firm. Yessin's contract with the Hospital, entered into in August 2005, enumerates the type of consulting services his company is to provide, *inter alia*, to "Develop strategy, with management, human resources and/or outside counsel to pursue labor relations objectives as identified by Hospital"; and to Conduct or prepare for meetings with employees related to labor relations and/or basic business literacy"; and to perform "Other related services as requested by Project Manager designated by the Hospital." The record evidence shows that Yessin and Tregear, throughout the election period, wore hospital-issued identification badges, were provided hospital office space (referred to by nurses as the "war room"), had access to secure rooms and departments in patient care areas, conducted meetings with employees in an effort to inform the nurses of the Respondent's position that the Union was unnecessary, and interacted with nurses as detailed below.

20 On October 23, RN Teresa Gardner, a member of the CNA Bargaining Council, went to a different department to take her break with Cindy Jadwin, a co-worker. Abundant and un rebutted record evidence establishes that this is a permitted, common and long-standing practice. Gardner noticed that Tregear seemed to be following her. Gardner met Jadwin in the ICU unit, and they walked into the ICU lounge together. They then noticed Tregear standing immediately outside the open door to the lounge. Gardner approached Tregear and asked, "Can I help you?" Tregear said no. Gardner asked why she was simply standing there, and Tregear replied she had a right to be there. Gardner said, "Well, I do, too. I'm on my break and so is Cindy [Jadwin] so I don't understand why you're standing right out there." However, according to Gardner, Tregear did not respond but "just continued to stand there with her arms folded." Because of Tregear's blatant eavesdropping Gardner and Jadwin were very uncomfortable and were unable to continue their conversation in the lounge. Gardner passed by Tregear on her way out of the room, and continued back to her unit. Tregear followed her out. Gardner turned around and said to Tregear, "You know I don't understand this. I feel like you're harassing me. What are you doing?" Tregear simply stood there with her arms folded and Gardner continued, "You know, I feel like you are a security guard just watching me. Please back off." Tregear was not called as a witness in this proceeding. I credit the testimony of Gardner and Jadwin.

40 After Gardner returned to her unit she related what had happened to a co-worker. Then she attempted to report the matter to Hospital CEO Linda Bradley, who was unavailable. She then talked with Lead Manager Sue Wenzel and Acting Manager Melissa Burns. Burns said she was sorry about what had happened and that Tregear's conduct was "so unprofessional," she also offered to arrange a meeting between Gardner and Tregear. Gardner declined. Bradley returned Gardner's call and Gardner told her she was very upset because one of the "union buster thugs" had been harassing her. By the end of the shift Gardner had related the incident to two or three other nurses. On the next day she related the incident to about 6 other nurses; some of them had already heard of the incident from others. Gardner testified:

Just people were getting very nervous. That they just felt that it was just getting more uncomfortable, that there was more pressure being put on about the vote and, you know, a lot of sentiments that, you know, if you were for the CNA, that you were being watched, and there was just a lot of people feeling very uncomfortable. That it was not a very open environment.

Also on that day, Gardner met with Bradley and complained about Tregear's conduct. Gardner testified as follows:

.5 And then, after I explained the whole situation, she listened and then she just  
said that she wanted me to think about —she goes I know that you and Joan  
have probably made up your mind already about the vote, but I wish you would  
give me a year without a union because a third party is going to make it very  
difficult to work with everyone...and then, if things didn't improve, we could re-  
10 vote a union in.

Bradley then started to leave and Gardner said, "please keep [Tregear] away from me, I don't  
need somebody following me, I don't want to be harassed again...I'm doing nothing wrong and  
she does not need to follow me." Bradley never stated or implied during the conversation that  
15 Tregear's conduct was unauthorized or inappropriate.

The Respondent maintains that Tregear was not authorized to engage in eavesdropping  
and following RN's around the Hospital, that Yessin & Associates had not been specifically  
hired to act as an agent for such purposes, and that the Hospital should not be held  
20 accountable for such unauthorized conduct.<sup>11</sup> I do not agree. Clearly the ubiquitous and highly  
visible conduct of both Yessin and Tregear, their presence throughout the hospital, and their  
meetings and other interactions with nurses, was sufficient to establish a reasonable basis for  
the nurses to believe that the Hospital had authorized the alleged agents to do the acts in  
question. *Mercy Healthcare Sacramento*, 334 NLRB 100 (2001); *Allegany Aggregates, Inc.*,  
25 311 NLRB 1165 (1993); *Bio Medical Applications of Puerto Rico, Inc.*, 269 NLRB 827, 828  
(1984). Accordingly, I find that both Yessin and Tregear are agents of the Respondent as  
alleged in the complaint.

Further, the Respondent argues that Acting Manager Melissa Burns' apology to Gardner  
30 establishes that the Respondent did not condone Tregear's conduct and that such apology was  
sufficient to dissipate the coercive effect of such conduct; therefore, no unfair labor practice  
should be found. I do not agree. There is no evidence that either Lead Manager Sue Wenzel  
or Acting Manager Melissa Burns were officially apologizing to Gardner on behalf of the  
Respondent; nor did they inform her that Tregear would be admonished and instructed not to  
35 engage in similar conduct in the future. Indeed, there is no evidence that Wenzel or Burns had  
any authority to make such a commitment. Further, it is significant that Bradley, the  
Respondent's CEO, who was in a position to disavow Tregear's conduct on behalf of the  
Hospital and admonish Tregear for such conduct, rather pointedly did not even comment about  
the incident; thus, after Gardner told Bradley of Tregear's conduct, Bradley chose to ignore  
40 Gardner's complaint and changed the subject by simply urging Gardner to vote against the  
Union. Under these circumstances, I conclude the Respondent did not effectively disavow  
Tregear's conduct. On the basis of the foregoing, I find that the conduct of Tregear, discussed  
above, is violative of Section 8(a)(1) of the Act as alleged, and also constitutes objectionable  
conduct.

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<sup>11</sup> However, in a position statement dated December 6, the Respondent responded to the  
charge by stating that on or around October 23, the Hospital was concerned that a nurse might  
be out of her work area inappropriately, and, "As a result, Ms. Tregear went to the ICU to check  
on the situation."

As noted above, Elizabeth Johnson is a member of the Union's Bargaining Council. . She and Yessin were familiar to each other as, about two weeks prior to the election, Yessin conducted a meeting of about 18 nurses during which, according to Johnson, Yessin introduced himself as legal counsel for the Hospital and attempted to dissuade them from voting in favor of the Union. During this meeting Johnson challenged him on a number of points and said he needed to learn to speak honestly. Further, two to three days prior to the election, Yessin entered the room during a routine daily staff meeting conducted by House Supervisor Julie Mobley; Johnson and apparently five or six other charge nurses were in attendance. Yessin said he was legal counsel for the Hospital, and wanted to talk to them. He said that since they were charge nurses and therefore part of management he could not understand why they were voting against management and wanted the Union.<sup>12</sup>

Johnson went to the Hospital on October 25 in order to vote. In the alcove area in front of the main door to the Hospital, she saw Pat Harvey, Brent Yessin and John Contreras, the security guard. Johnson stopped to talk to Contreras. She asked him about the homeless people who lived behind the Hospital because it was cold and she wanted to make sure that they had blankets and food. Yessin and Harvey approached, and Yessin asked her what she was talking about. Johnson replied that they were talking about the homeless because it was cold out, and continued her conversation with Contreras. Harvey walked away but Yessin remained and listened to their conversation. Then Johnson walked into the hospital lobby to vote. In the lobby she saw a young man who had been her patient in the past, and when she stopped to talk with him Yessin again approached. He again asked why she stopped and what she was speaking about. She replied she was asking about the young man's family and how they were doing. Then Yessin gestured toward Johnson's attire, and said, "You can understand why we wouldn't want you talking to people." Johnson was wearing a CNA scrub top, CNA lanyard, and multiple CNA buttons. Then she went in to vote. When she left the lobby she saw Yessin, Harvey, House Supervisor Flo Lott and some six other managers standing in the lobby while other voters were coming in and out of the lobby.

Teresa Gardner voted on October 26, near the end of her shift. After she voted she walked back to ER to use the restroom and get something out of her locker before she went home. She entered ER and began talking to Paul, another ER nurse about how unusual it was to have so few ER patients that evening, when she heard Yessin, who had entered the ER area,<sup>13</sup> "roaring" her name. Yessin approached them, directed Gardner to come with him, and told her that he was having her vote disqualified. Gardner refused, and Yessin continued his diatribe, calling her "unethical." Paul, the other nurse, was backing away, looking scared. As Gardner walked out, Yessin continued to yell at her and called her "unethical." She said she didn't know what he was talking about. She walked away, and Yessin followed her out and continued to yell at her. Abundant uncontradicted record testimony, including Gardner's testimony, establishes that it is a regular, customary and permissible occurrence for nurses to be at the Hospital, in their units or other units, during off-duty hours.

Noemi Baluyut, also a member of the Union's Bargaining Council, testified that on October 26, she arrived at the Hospital to vote. As she entered the lobby, Harvey observed her and told her she was too early, as the polls for that session had not yet opened. Baluyut then

<sup>12</sup> Prior to the election the Respondent took the position that charge nurses were supervisors and therefore excluded from the unit. The charge nurses voted by challenged ballot, and following the election, by stipulation of the parties, they were regarded as eligible voters and their ballots were counted.

<sup>13</sup> For Yessin to enter the ER area it was necessary for him to have a key or a swipe badge.

went to ICU and sat there in a chair in the corner of the nurses' station, to be out of everyone's way until she could vote. As she was waiting, Yessin approached her<sup>14</sup> and apparently asked why she was there. Baluyut told Yessin she had the flu, that she was waiting to vote, and intended to see her doctor after she voted. Yessin said, "Please, Noemi, come with me." She followed him out of ICU and he said, "I would like you to be out of here. I don't want you to be our liability." She did not know what he meant. When they got to the lobby he wanted to know where she parked. Baluyut left, went to see her doctor across the street at a nearby office, and later came back to vote.

Yessin did not testify in this proceeding, and the Respondent offers no explanation for Yessin's following, monitoring, escorting, berating, yelling at, and questioning employees Johnson, Gardner and Baluyut,<sup>15</sup> and, in addition, for threatening to disqualify Gardner's vote. All these individuals are members of the Union's Bargaining Council, and Yessin was clearly attempting to limit their presence at the Hospital during the election even though they had a right to be on hospital premises and to otherwise engage in whatever they happened to be doing when interdicted by Yessin. There is no contrary evidence. By Yessin's actions, I find the Respondent has violated and is violating Section 8(a)(1) of the Act. See *Norton Audubon Hospital*, 338 NLRB 320 (2002).

As set forth above, I have found that the Respondent's confiscating and discarding union literature is violative of the Act; it therefore also constitutes election interference. The Union further maintains in its election objections that the Respondent distributed anti-union OWLS fliers, and that such conduct constitutes election interference. In this regard, two employees, Delia Buan and Jolfa Tinga, testified that prior to the election they observed House Supervisor Julie Mobley placing stacks of OWLS fliers on a table in the common room on two separate occasions. Mobley did not testify in this proceeding and there is no contrary evidence. Accordingly, as the Respondent otherwise discouraged pro-union activities and assisted anti-union activity by distributing OWLS fliers, such latter conduct also constitutes election interference. *Hy-Gain Electronics*, 232 NLRB 85, 88 (1977).

Barbara Rammell, also a member of the Union's Bargaining Council, is no longer employed by the Respondent. She was employed as a per diem or on-call registered nurse. Rammell testified that on Monday, October 16, she left her workstation to take a break in the ICU lounge with coworker Cindy Jadwin. As they were talking with a few other nurses at the ICU nursing station, Jadwin's supervisor, Cathy Malone, approached and stood within two to three feet of them. Immediately thereafter, Kathy Tregear approached, and Malone and Tregear stood there listening in on the conversation. Rammell testified that the presence of Malone and Tregear made it "uncomfortable," and Rammell decided to leave before her presence there got Jadwin in trouble. Neither Malone nor Tregear testified in this proceeding.

Also on October 16, after clocking out, Rammell happened to be talking to a doctor and another nurse in a non-patient care area; she and this particular doctor discussed politics and

<sup>14</sup> According to Baluyut's description of the individual, I find it was Yessin, as other witnesses who identified Yessin described him similarly.

<sup>15</sup> There is no record evidence that at the time Yessin followed Baluyut to ICU or asked what she was doing there, he was aware she had the flu.

other topics, including union topics, fairly frequently. When the doctor left, Clinical Lead Linda Griggs<sup>16</sup> came up and told her it was inappropriate to discuss union topics in the hospital. Griggs did not testify in this proceeding.

.5 Rammell was called in to work on October 22, the Sunday before the election. Rammell's lengthy testimony, consisting of some 15 transcript pages, details the manner in which her work and patient care activities, sometimes as she was performing these tasks with another nurse, were conspicuously and closely monitored during the day, at various locations throughout the hospital, and even while she was in the elevator and parking lot. It seems  
10 unnecessary to recount her specific testimony, and it is sufficient to note that her movements that day were continually monitored by House Supervisor Julie Mobley, OR Manager Ken Sitarsky, Tregear, Harvey, and Bradley, from the time she arrived at the Hospital until she left for a break, at which time Mobley and Bradley watched her get in her car. Later, when Rammell returned to the Hospital at about 3:00 p.m. for another surgery, Clinical Lead Greta  
15 Hogdahl began noticeably monitoring her activities. As Rammell was about to leave for the day, Hogdahl volunteered that she was asked to remain there watching Rammell, and was not permitted to leave until Rammell left for the day. Rammell's testimony stands unrebutted, and the Respondent called none of the aforementioned managers or supervisors to deny that Rammell was indeed closely monitored that day.

20 Chief Nursing Officer Pat Harvey testified that she received reports from Sitarsky, Houghdahl and Lynn Krieg that Rammell had been "really aggressive" during the decertification campaign on behalf of the Union. Accordingly, Harvey told the "peri-operative management team, that...they needed to be very mindful of Barb doing her job, and doing just her job, and  
25 not engaging in other activities outside of her job, while she was supposed to be doing her job." Harvey also acknowledged that there was no "written policy" regarding talking about the Union during work time, as long as the talking did not run afoul of the policy that "Employees will not solicit for any purpose during work time." Harvey interpreted this policy to mean "any  
30 discussions about the Union and Union activity should be held at break time." But when asked whether conversations about the Union were permissible during work time, Harvey replied, "I can't answer your question, specifically." Rammell was given no "informal coaching" about this alleged aggressive pro-union behavior, in compliance with the Respondent's progressive disciplinary procedure, but she believes Rammell did receive admonitions that "she needed to be paying attention to her work, and not to other activities." The Respondent called no  
35 supervisors or managers as witnesses to substantiate Harvey's hearsay testimony, or to rebut Rammell's testimony, or to show that Rammell was not satisfactorily performing her work.

40 On the basis of the foregoing, I credit Rammell and find that the close and conspicuous monitoring of her daily activities on October 16, and the continuous monitoring of her activities throughout the day on October 22, was not justified. Indeed, Harvey's testimony shows that discussions about the Union during work time are only prohibited if they amount to solicitation, and what may constitute solicitation is not defined and is highly subjective<sup>17</sup>; further, as noted, the Respondent has elected not to provide evidence regarding this matter. In addition, Rammell's October 16 break-time discussion with the doctor, for which she was admonished by  
45 Clinical Lead Linda Griggs, was not solicitation as the doctor was not a prospective voter.

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<sup>16</sup> In the underlying representation hearing it was stipulated that clinical leads are supervisors within the meaning of Section 2(11) of the Act. Clinical leads make assignments and prepare evaluations for nurses.

<sup>17</sup> Rammell agreed that she had "conversations about union issues" with other nurses during their working time.

Indeed, Griggs made it clear to Rammell that she was not to discuss union matters “in the hospital,” and thus attempted to prohibit such conversations even during break time. Accordingly, I find merit to the election objections regarding Respondent’s monitoring of Rammell’s activities during both work and break time. Clearly such conduct by the Respondent constitutes election interference.

Various witnesses testified that as they came to the Hospital to vote and parked in spaces designated for voters, they were approached by John Contreras, the hospital’s long-time security guard. Contreras is not an employee of the Respondent but works for a private security firm. Contreras was holding a clipboard containing an alphabetical list of the nurses, and as the voters exited their cars he asked their names and checked their names off the list, telling the voters that he was keeping track of the nurses coming in and out. One nurse, Delia Buan, who had not parked in one of the designated spaces, happened to be talking with Contreras in the parking lot and asked him what he was doing. Yessin approached and observed to Contreras, “Not too many people voting. It must not have been busy out in the parking lot.” The record does not show how many voters parked in the designated parking spaces on the days of the election, or how many voters Contreras checked off his list.

Harvey testified that on the days of the election the Respondent, wanting to encourage people to vote, set aside two parking spaces in front of the Hospital and designated them for voters so they could quickly vote and not have to park in a remote parking lot. The security person was to insure that the designated voter parking spaces were only utilized by in-and-out voters and not by long-term parkers; for this reason, Harvey believes Contreras, apparently on his own volition, decided to record the nurses’ names and the unit where they worked, in the event he found it necessary for them to move their cars.

Contreras was an agent of the Respondent as he was admittedly designated to monitor the parking spaces; further, it is reasonable to presume that the Respondent gave him a list of voters for this purpose and instructed him to ask their names and mark the list accordingly as they exited their cars. There is no contrary evidence. I conclude, under the circumstances, particularly in view of the closeness of the election and the reasonable assumption that numerous voters may have parked in the designated spaces, that the conspicuous maintenance of the list constitutes election interference. Further, as exemplified by the testimony of Buan, *supra*, it is likely that additional voters who did not park in the designated spaces nevertheless became aware of Contreras’s list keeping. In *Southland Containers, Inc.*, 312 NLRB 1087 (1993), the Board states:

Although the Board, in general, finds keeping any voting list other than the official *Excelsior* list to be objectionable, “list keeping” is a basis for a new election only when it can be shown or inferred from the circumstances that employees knew their names were being recorded. *Piggly-Wiggly #011*, 168 NLRB 792 (1967).

See also the Board’s discussion in *Days Inn Management Co., Inc.*, 299 NLRB 735 (1992), *enf. denied*, 930 F.2d 211 (2<sup>nd</sup> Cir. 1991).

The election was held on October 25 and 26, and there were four voting sessions on each of these two days. About ten minutes prior to the beginning of each voting session a union contingent, comprised of some three union representatives and two union election observers, would enter the hospital lobby and proceed across the lobby into a hallway leading to the conference room where the election was to take place. On each such occasion, representatives of the Respondent were stationed near the lobby entrance awaiting their arrival, and would escort the union contingent to the conference room. Then, as the voting was about

to commence, the union's election observers would remain in the voting room, and the union's representatives would be escorted back through the lobby and out of the Hospital by the Respondent's representatives.

Describing this scenario, Union Representative David Monkawa testified that prior to the first voting session on October 25, which began at 6:30 a.m., the union contingent entered the lobby and the Respondent's representatives, including Yessin and Tregear, "converged on us as we entered," and, walking in very close proximity, escorted them toward the polls. Monkawa estimated there were at least two of Respondent's representatives on each side, and there could have as many as six in all, as others representatives of the Respondent were walking behind them. Further, other hospital administrators seemed to be standing around watching as the phalanx proceeded down the hallway. While proceeding to the voting room, Monkawa saw individuals wearing scrubs, possibly voters, in the lobby or hallway. A similar scenario was repeated on various occasions during the two days of voting.

Michael Pastrallo, Director of Cardio-Pulmonary Services, testified that he was instructed to escort CNA people from the lobby to the voting area and did so on five or six occasions during the two days of voting. According to Pastrallo, on these occasions there were only a total of three escorts, including Yessin. The record evidence substantiates, however, that Pastrallo was not present at the first session as described by Monkawa, and that Monkawa may not have been present at other times described by Pastrallo. Accordingly, I credit, generally, the testimony of both Monkawa and Pastrallo.<sup>18</sup> The Respondent offered no explanation for its conduct, and Pastrallo testified that "the reason why I did that [escorted the CN A contingent to the polls] was unknown to me, other than the fact to make sure that they got to the room they were looking for."

The Union maintains that subjecting the union observers or other voters who may have noticed the procession, to this "management wedge" constitutes objectionable conduct. I agree. I conclude the manner in which six escorts escorted the voters to the voting room, whether flanked by six or three escorts, was clearly intimidating to potential voters. Surely the Respondent could have directed the union contingent to the voting room in a subtler and less conspicuous manner. Indeed, under the circumstances, it is reasonable to assume the Respondent intended its conduct to have such an intimidating effect. There appears to be no other reasonable explanation for such unusual behavior, as the voting room is just down the hallway off the main lobby. Accordingly, I find merit to this election objection.

The Union also maintains that as the union contingent was being escorted to the voting room, and at other times throughout the days of the voting, there were an inordinate number of Respondent's managers, supervisors and administrators in and about the lobby and hallways "with unobstructed views of all employees entering and exiting the polling place," and further, that these individuals, by their conduct, "creat [ed] an impression of surveillance on the days of the election." According to the testimony of Monkawa and other union witnesses, these representatives of the Respondent, most of whom were unidentified, seemed to be positioned in the lobby or at hallway intersections, and were conspicuously observing the union contingent

<sup>18</sup> Nancy Coeman-Bergeron testified that during the 6:30 p.m. voting session on October 26, she and another nurse were closely followed by Petrallo for about ten feet as they entered the lobby and walked to the voting room. Coleman-Bergeron turned to him and said, "I think I have a shadow." Petrallo said, "Oh, are you going to vote." Coleman-Bergeron said yes, and Petrallo said "okay, then," and walked off. I credit the account of Coleman-Bergeron and find that Petrallo simply did not recollect this event.

and the voters as they proceeded through the lobby down the hallway to the polling area. And according to Johnson's testimony, *supra*, when she left the lobby after voting on October 25, she saw Yessin, Harvey, House Supervisor Flo Lott and some six other managers standing in the lobby while other voters were coming in and out of the lobby.

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Respondent's witnesses Pastrallo and Harvey testified that there was no such monitoring, that the hospital lobby is a busy place, and that administrative and other offices are located on either side of the hallway; and Pastrallo's testimony that the hallway "is a very busy corridor, and it is the main thoroughfare for the Hospital" stands uncontroverted. Further, Harvey testified that in addition to the normal hospital activity of patients checking in, and visitors coming and going, there were auxiliary individuals stationed in the lobby who were there to baby-sit the children of nurses who came to vote.

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Nancy Coleman-Bergeron testified that during the 6:30 p.m. voting session on October 26, she and another nurse, both of whom were off duty, were closely followed by Pastrallo for about ten feet as they entered the lobby and walked to the voting room. Coleman-Bergeron turned to him and said, "I think I have a shadow." Pastrallo said, "Oh, are you going to vote." Coleman-Bergeron said yes, and Pastrallo said "okay, then," and walked off. I credit the account of Coleman-Bergeron and find that Pastrallo simply did not recollect this event. It is clear that there was no rule prohibiting nurses from being in the Hospital during off-duty hours; therefore, I find, Pastrallo's following the two nurses who entered the Hospital was unwarranted.

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While it does seem unusual that hospital personnel would have been standing around in the hallways before 6:30 a.m., as Monkawa testified, it also makes sense that if they happened to be on the premises for legitimate reasons, they, and others, would have been curious about the rather conspicuous phalanx of individuals walking through the lobby, and perhaps would have paused near the hallway intersection to let the group pass. Further, under the circumstances, it is difficult to ascertain whether or not, throughout the election period, hospital personnel were in the area for reasons unrelated to the election, or whether they were attempting to monitor the activities of voters coming into the Hospital. On the other hand, it is clear that Yessin and other managers, as noted by Johnson, were in the lobby during the voting process, and that Yessin, in particular, was indeed monitoring and engaging in surveillance of the activity of voters as they entered the building, *supra*, as was apparently Pastrallo on the one occasion noted above. Accordingly, I find merit to this objection of the Union and find that by such conduct the Respondent engaged in election interference.

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The Union maintains that the Respondent engaged in election interference "by implying to employees that union representation caused them financial disadvantage." Abundant record evidence establishes that within a week or so prior to the election various supervisors summoned many, if not all, nurses to the supervisors' offices for a one-on-one conversation, handed them their paychecks, and told them that the Union had cost them considerable amounts of money. Sometimes they would be told that the Union had cost the nurses a total of \$400,000, at which time the nurses would be handed a poker-chip size token with "\$400,000 Lost" on one side and "Vote NO!" on the other. Sometimes nurses would be told of the specific amount they had lost since the advent of the Union; and sometimes nurses would be told both the specific amount and would also be given the token.

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An example of such a one-on-one meeting is as follows. Noemi Baluyut testified that about a week before the election she was called to Manager Cathy Malone's office for a conversation that lasted about ten or fifteen minutes. Malone told Baluyut to close the door, and asked, "Well, Noemi, what is going on with the Union, and what do you think?" Baluyut responded that both sides seemed to be trying very hard to solicit votes for their respective

positions, and Malone replied, "Yeah, I know, Noemi. It is really sad that the Union is keeping everybody from getting their benefits. Do you know how much money you lost because of the Union?" Baluyut said no, and Malone told her the nurses "lost thousands of dollars because of the Union." Baluyut said, "Well, Cathy, you know, we don't have a voice here and we need one,  
 .5 and that is what we are fighting for. It is not really all about money." Malone then showed her two letters, one from doctors on the staff of Crown Surgical Group, and the other from the Director of the hospital's Emergency Room Department, urging the nurses to vote against the Union. Baluyut replied it really didn't matter what the letters said, adding that she didn't like the manner in which the letters were being used. Then Baluyut said, "You know, Cathy, we are  
 10 being harassed and we are being intimidated. We are being followed around like criminals and this has to stop."<sup>19</sup> There was back-and-forth conversation about this, and, in order to end the conversation, Baluyut indicated that she really did not like the Union. Then Malone handed her the token.

15 I find that the interrogation of Baluyut was coercive. Thus Manager Malone summoned Baluyut to a closed-door meeting, and began the conversation by asking her what was going on with the Union. Even though Baluyut was known to be an active union adherent and was on the Union's Bargaining Council, the question posed to her would reasonably have caused Baluyut to believe that she was being asked to divulge information about union matters to which Baluyut  
 20 was privy. See *Central Valley Meat Co.*, 346 NLRB at 1080.

The record reflects, generally, that during these one-on-one meetings the nurses understood the intent, although not explicitly stated, of the message that the supervisors were attempting to convey: namely, that since the Union and Respondent commenced bargaining in  
 25 1994, the nurses had received no wage increases<sup>20</sup> because no bargaining agreement had been reached; that, moreover, during this period of time the nurses at Rancho Springs, a nearby hospital also owned and operated by the Respondent's parent corporation, had received regular wage increases; and that the large disparity was the result of the failure of the Union and Respondent to reach agreement.

30 In *TCI Cablevision of Washington, Inc.*, 329 NLRB 700-701, the Board states:

An employer has the right to compare benefits presently in effect in its unorganized facilities with those enjoyed by employees in a similar facility which  
 35 has union representation. *Walgreen Co.*, 203 NLRB 177, 181 (1983).

\* \* \*  
 The dissent argues that the Employer "made clear" to employees that decertifying the Union was a "necessary condition" for receiving the benefit. The Employer did no such thing. Rather, the Employer accurately reported that its nonrepresented employees  
 40 received the benefit and that, in the past, the Union had not successfully negotiated for this benefit. The Employer never said that it would never agree with the Union to have such a plan.

Accordingly, I find the nurses, who were certainly kept aware of the lengthy and unfruitful collective bargaining negotiations, could have reasonably understood the  
 45 Respondent's message, although not explicitly expressed, as a statement of fact

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<sup>19</sup> The record abundantly shows that the Respondent's conduct, as noted in this Decision and Report on Objections, was widely disseminated and repeatedly discussed among the nurses throughout the Hospital prior to the election. The record is replete with such evidence, and it seems unnecessary to recount such record evidence in specific detail.

<sup>20</sup> Or, as one nurse testified, perhaps a "miniscule" increase.

unaccompanied by a threat. While the message certainly could have been interpreted differently, for example as a threat that the Respondent had no intention of ever reaching a collective bargaining agreement with the Union or of granting a wage increase as long as the Union represented the nurses, there is no such supporting evidence in this record and such an interpretation would be merely a matter of conjecture and opinion. Therefore, I find this election objection to be without merit.

### **B. Impact of Objectionable Conduct on the Election**

The foregoing conduct of the Respondent, with the exception of the *Weingarten* issue, *infra*, is included within and encompassed by the election objections.

Taking into consideration the number of unfair labor practice violations and other instances of objectionable conduct found herein, their severity, the extent of dissemination, the size of the unit (265), the closeness of the vote (101 to 129), together with the potentially large number of employees directly and indirectly affected by the objectionable conduct, it is clear that the election should be set aside and a second election directed by the Board. See *Mercy General Hospital, supra*, 334 NLRB at pages 107-8. In this regard it should be emphasized that, as noted above and abundantly established by record testimony, virtually all of the numerous incidents set forth herein were widely disseminated through word of mouth and repeatedly discussed among unit employees prior to the election.

### **C. Additional Unfair Labor Practice Allegation, Analysis and Conclusions**

The aforementioned settlement agreement and notice also resolved a *Weingarten*<sup>21</sup> issue, the notice stating: "WE WILL NOT deny you your right to a union representative at an investigatory interview that you reasonably believe may result in discipline by telling the union representative to remain silent during the interview."

On August 25, 2005, RN Tom Barclay selected RN Cindy Jadwin as his union representative during an investigatory interview. Jadwin testified that early in the meeting the Respondent's Director of Human Resources, Shanon Weidauer, told Jadwin, who had attempted to ask a clarifying question, "that Weingarten meant that I could be in the meeting, but I was not allowed to verbally participate." Further, during the meeting Weidauer reprimanded Jadwin for writing a note to Barclay. Jadwin testified that, as she had been precluded by Weidauer from verbally participating in the meeting, the note to Barclay was to remind him to ask whether he was being charged by the Respondent with any infraction at that time. Jadwin testified that during the meeting she did not whisper something to Barclay, as alleged by the Respondent. Barclay's testimony is somewhat equivocal on this point. Thus, on cross-examination he initially denied that there was any whispering, but at a later point seemed to acknowledge such whispering. In all other respects, Barclay's testimony corroborates that of Jadwin.

Whether or not Jadwin whispered something to Barclay is not determinative of this matter. I find, contrary to Weidauer's testimony, that even if such whispering did occur, it did not interfere with Weidauer's questioning of Barclay. There is no contention that either Barclay or Jadwin were uncooperative, or that Weidauer was unable to thoroughly and effectively question Barclay about the matter under investigation. Two other representatives of the Respondent

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<sup>21</sup> *NLRB v. Weingarten*, 420 U.S. 251 (1975).

attended the meeting, namely, Chief Nursing Officer Pat Harvey, and Director of the Medical/Surgical/Telemetry Units Diana Lewis. Lewis did not testify in this proceeding, and Harvey, who did testify about other matters, was not asked about the incident and therefore did not corroborate Weidauer's testimony that Jadwin interfered with her questioning of Barclay by whispering or in any other manner.

I find the parameters set for Jadwin effectively denied Barclay his right to *Weingarten* representation. By denying Jadwin the right to verbally participate in the meeting as Barclay's *Weingarten* representative, I find the Respondent violated the Act as alleged. *Talso Corporation*, 317 NLRB 290, 331-32 (1995); *New Jersey Bell Telephone*, 308 NLRB 277, 279, 282 (1992); *San Antonio Portland Cement Co.*, 277 NLRB 338, 339 (1995).

### Conclusions of Law and Recommendations

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2) (6) and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has violated Section 8(a)(1) of the Act as found herein.

4. It is recommended that the Union's election objections be sustained and that the Board set aside the election and direct a second election.

### The Remedy

Having found that the Respondent has violated and is violating Section 8(a)(1) of the Act, I recommend that it be required to cease and desist therefrom and from in any other like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act. I shall also recommend the posting of an appropriate notice, attached hereto as "Appendix."

### ORDER<sup>22</sup>

The Respondent, Universal Health Services of Rancho Springs, Inc., d/b/a Southwest Healthcare System, d/b/a Inland Valley Medical Center, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Prohibiting employees from wearing CNA scrub tops.

(b) Denying employees the right to effective union representation during investigatory interviews.

<sup>22</sup> If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Engaging in surveillance of employees' union activities.

(d) Interrogating employees regarding their union activities.

(e) Confiscating and discarding union materials from breakrooms or other locations where union materials may be appropriately kept.

(f) Following, monitoring, eavesdropping on, berating and yelling at employees throughout the Hospital, while on break or at other times, including off-duty times, because of their union activity.

(g) Threatening employees that their votes in the election will be disqualified because of their union activity.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action, which is necessary to effectuate the purposes of the Act.

(a) Within 14 days after service by the Region, post at its facility copies of the attached notice marked "Appendix."<sup>23</sup> Copies of the notice, on forms provided by the Regional Director for Region 21, after being duly signed by Respondent's representative, shall be posted immediately upon receipt thereof, and shall remain posted by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 31, 2005.

(b) Within 21 days after service by the Regional Office, file with the Regional Director for Region 21 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated: Washington, D.C. March 26, 2008

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Gerald A. Wacknov  
Administrative Law Judge

<sup>23</sup> If this Order is enforced by a judgment of the United States Court of Appeals, the wording in the notice reading, "Posted by Order of the National Labor Relations Board," shall read, "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing and Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities

**WE WILL NOT** prohibit employees from wearing CNA scrub tops.

**WE WILL NOT** deny employees the right to effective union representation during investigatory interviews.

**WE WILL NOT** engage in surveillance of employees' union activities.

**WE WILL NOT** Interrogate employees regarding their union activities.

**WE WILL NOT** confiscate and discard union materials from break rooms or other locations where union materials may be appropriately kept.

**WE WILL NOT** follow, monitor, eavesdrop on, berate or yell at employees throughout the Hospital, while on break or at other times, including off duty times, because of their union activity.

**WE WILL NOT** threaten to have employees' votes disqualified because of their union activity.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce employees in the exercise of the foregoing rights guaranteed them by Section 7 of the Act.

INLAND VALLEY MEDICAL CENTER

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

888 South Figueroa Street, 9th Floor

Los Angeles, California 90017-5449

Hours: 8:30 a.m. to 5 p.m.

213-894-5200.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 213-894-5229.